

The Examiner has required restriction to one of the following inventions:

- I. Claims 1-8, 14-21, drawn to an adenovirus vector comprising an intron and a heterologous transgene, classified in class 435, subclass 320.1 and class 424, subclass 233.1;
- II. Claims 22-24, drawn to a method of making an adenovirus vector, classified in class 435, subclass 91.41;
- III. Claims 25-27, drawn to a method of making an adenovirus, classified in class 435, subclass 70.1;
- IV. Claim 35, drawn to a method of treating or ameliorating symptoms of an RNA viral infection, classified in class 424, subclass 202.1;
- V. Claim 36, drawn to a method of treating or ameliorating symptoms of a DNA viral infection, classified in class 424, subclass 202.1;
- VI. Claim 37, drawn to a method of treating or ameliorating symptoms of a bacterial infection, classified in class 424, subclass 201.1;
- VII. Claim 38, drawn to a method of treating or ameliorating symptoms of a parasitic infection, classified in class 424, subclass 265.1.

The Examiner has imposed a further restriction requirement if Group I is elected. The election is between transgenes A-D:

- A) pathogen, claims 9, 28, 33 and 3;
- B) virus protein, claims 10, 11, 29 and 30;
- C) bacterial protein, claims 12 and 31; and
- D) parasite, claims 13 and 32.

Applicant hereby elects Group I (claims 1- 8 and 14-21), and further we elect group "B" (claims 10, 11, 29 and 30) (a virus protein) with traverse. Applicant expressly reserves his right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.

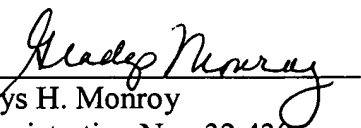
Applicant traverses the restriction requirement because, while Applicant agrees that the inventions listed in groups A to D are patentably distinct, it would not cause an undue burden on the Examiner to examine all four transgenes together. There are two criteria that must be met for a proper restriction requirement between patentably distinct inventions. (1) The inventions must be independent; *and* (2) there must be a serious burden on the Examiner if restriction is required. (*See* MPEP § 803.) In the present case the second criterion has not been met. Indeed, a search of art for the elected virus proteins (Group I-Group B) would substantially overlap a search for pathogens (Group I-Group A).

Applicant requests examination of the elected subject matter on the merits.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **293102002900**. However, the Assistant Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: July 28, 2003

Respectfully submitted,

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